

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Verizon Wireless LLC d/b/a Verizon Wireless;)
VoiceStream PCS I, LLC d/b/a T-Mobile;)
VoiceStream GSM I Operating Company, LLC;)
d/b/a T-Mobile; Omnipoint Holdings, Inc.)
d/b/a T-Mobile; Powertel/Kentucky, Inc.)
d/b/a T-Mobile; NPCR, Inc. d/b/a Nextel)
Partners; Nextel Partners Operating Corp.;)
AT&T Wireless PCS, LLC and TeleCorp)
Communications, Inc. d/b/a AT&T Wireless)

vs.)

Docket No. 04-0040

)
Adams Telephone Co-Operative;)
Alhambra-Grantfork Telephone Company;)
C-R Telephone Company; Cass Telephone)
Company; Egyptian Telephone Cooperative)
Association, Inc.; El Paso Telephone)
Company; Flat Rock Telephone Co-Op, Inc.;)
Grafton Telephone Company; Hamilton County)
Telephone Co-Op; Home Telephone)
Company; Laharpe Telephone Company;)
Marseilles Telephone Company; McDonough)
Telephone Co-Operative, Inc.; McNabb)
Telephone Company; Metamora Telephone)
Company; Mid-Century Telephone)
Cooperative, Inc.; Odin Telephone)
Exchange, Inc.; Shawnee Telephone)
Company; Yates City Telephone Company)
)
Petition for Investigation of Wireless)
Termination Tariffs.)

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS AND MOTION TO STRIKE**

On February 18, 2004, the Respondents in this matter, with the exception of Alhambra-Grantfork Telephone Company, filed a Motion to Dismiss and a Motion to Strike. The Staff of the Illinois Commerce Commission ("Staff") recommends that the

Commission deny the Respondents' Motion to Dismiss and grant their Motion to Strike.

In support of its position, Staff states as follows:

1. On February 18, 2004, the Respondents in this matter, Adams Telephone Co-Operative; Alhambra-Grantfork Telephone Company; C-R Telephone Company; Cass Telephone Company; Egyptian Telephone Cooperative Association, Inc.; El Paso Telephone Company; Flat Rock Telephone Co-Op, Inc.; Grafton Telephone Company; Hamilton County Telephone Co-Op; Home Telephone Company; Laharpe Telephone Company; Marseilles Telephone Company; McDonough Telephone Co-Operative, Inc.; McNabb Telephone Company; Metamora Telephone Company; Mid-Century Telephone Cooperative, Inc.; Odin Telephone Exchange, Inc.; Shawnee Telephone Company; and Yates City Telephone Company (hereafter "the rural ILECs") filed a Motion to Dismiss and Strike, seeking an order dismissing the CMRS Providers' Petition, and striking the CMRS Providers request that the tariffs be suspended. See Motion to Dismiss and Strike.

Motion to Dismiss

2. The rural ILECs allege that the CMRS Providers' petition is defective because the CMRS providers are not customers of the rural ILECs and the petition fails to allege that they are. Motion to Dismiss and Strike, ¶¶3-4.

3. The rural ILECs further allege that reliance on federal law is misplaced, inasmuch as their terminating access tariffs apply until such time as each of the CMRS providers enters into an interconnection agreement with each rural ILEC. Id., ¶2.

4. Both of these assertions should be rejected. As the Staff demonstrated in its Motion to Cancel Tariffs, filed on February 18, the CMRS Providers are in fact customers of the rural ILECs. See Staff Motion to Cancel Tariffs, ¶¶6-15.

5. The rural ILECs' attempt to avoid the application of federal law is futile. It is utterly clear that federal law and regulations call for payment of reciprocal compensation, rather than terminating access, when CMRS providers and ILECs terminate intra-MTA traffic on one another's networks. 47 C.F.R. §51.701(b)(2).

6. Moreover, it is important to remember that it is the rural ILECs' responsibility – not the CMRS providers' – to enter into reciprocal compensation agreements. Section 251(b)(5) of the federal Telecommunications Act clear makes it clear that “local exchange carrier[s] ha[ve] the ... duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.” 47 U.S.C. §251(b)(5). As it happens, CMRS providers are not “local exchange carriers.” See 47 U.S.C. §153(26) (definition of “local exchange carrier” specifically does not include CMRS providers, “except to the extent that the Commission finds that such service should be included in the definition of such term[,]” which, to the Staff's knowledge, has not occurred). Thus, the rural ILECs have the responsibility to conclude reciprocal compensation agreements with the CMRS providers. Until they do, the CMRS providers are absolutely within their rights to assume that the rural ILECs are satisfied with a “bill and keep” arrangement. Thus, if anyone has run afoul of the federal law in this regard, it is the rural ILECs.

Motion to Strike

7. Petitioner's request for suspension of the Wireless Tariffs is expressly prohibited under the Illinois Public Utilities Act ("PUA"). The statute pursuant to which the tariffs were filed, Section 13-504 of the Public Utilities Act, 220 ILCS 5/13-505, specifically prohibits the suspension of tariffs filed under its authority. It provides that: "The proposed changes [in rates, classifications, or tariffs] shall not be subject to suspension." 220 ILCS 5/13-504(a). Staff, accordingly, agrees with the rural ILECs that the Petitioner's request for suspension of the Wireless Tariffs is prohibited under the PUA.

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission recommends that the Commission deny the rural ILECs Motion to Dismiss and grant their Motion to Strike.

Respectfully submitted,

Illinois Commerce Commission Staff

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